Motor & General Insurance Sdn Bhd v Pok Siong Kok & Ors

HIGH COURT (BANDAR SERI BEGAWAN) – CIVIL APPEAL NO 3 OF 1988
GODFREY J
28 JUNE 1988

Insurance – Motor insurance – Car involved in accident – Total loss – Valuation of car – Proof of market value of car

The plaintiff purchased a brand new car for $20,000. He insured it with his company. The value was estimated at $20,000. Under the terms of the policy there was an excess of $1,200. It was also provided that in the event of total loss, the company would pay the insured value less 25% depreciation or the market value, whichever was less. The plaintiff's car was involved in an accident caused by the defendant. The car was a total loss. The plaintiff recovered $13,800 from his insurance company ($20,000 less 25% minus the excess of $1,200). The plaintiff sued the defendant for the amount which he had not recovered from his insurance company. The defendant joined T, his insurers, as third party. The chief magistrate gave judgment to the plaintiff for $1,200 representing the excess and $5,000 representing the amount which the plaintiff's insurance company had not paid. T was ordered to pay this amount to the defendant. T did not dispute liability to pay the $1,200 but appealed against the holding that the defendant was liable to pay the plaintiff $5,000 which the insurance had not covered.

Held, allowing the appeal:

(1) When a car is destroyed in an accident, the normal measure of damages is the market value of the car, ie what it would have cost to replace it, at the date of the accident.

(2) There was no evidence of the market value of the car before the chief magistrate. The fact that the plaintiff's insurers had been content to accept this estimate of the car's value was not evidence of its market value at the time of the accident. The plaintiff could only have succeeded in his claim by proving that the market value of the car at the date of the accident exceeded $15,000 (the insured value less depreciation). This he did not do.

(3) The order of the trial judge must be varied so as to give the plaintiff $1,200 instead of $6,200 by way of damages.

Case referred to

1 *Moore & Anor* v *DER Ltd* [1971] 1 WLR 1476 (refd)

TC Chan for the appellant.
Norila Abu Hassan for the first respondent.
David Young for the third respondent.

Cur Adv Vult

Godfrey J: On 26 December 1985, the plaintiff, a goldsmith, needing a new car for business purposes, bought a Nissan Skyline 2.4GT Sedan, registration number BH6277. The price was $20,000. He bought the new car on hire-purchase. He traded in his old car, valued at $5,000, borrowing the balance of $15,000 from a finance company.

He insured the new car with Borneo Insurance Sdn Bhd. In the policy, the car was stated to have been manufactured in 1984 and the 'insured's estimate of value' was given as $20,000. Under the policy, the insured was liable for the first $1,200 of any loss. The insurance company had an option, in the event of a total loss, to 'pay in cash the insured value less 25% depreciation or the market value of the vehicle, whichever is less'; and less also the $1,200 excess to which I have referred.

On 19 January 1986, the plaintiff met with an accident in the new car. The other vehicle involved was being driven by the first defendant, an employee of the second defendant. The plaintiff's new car was a total loss.

On 5 February 1986, the plaintiff's insurance company wrote to the plaintiff offering to pay him $13,800, made up as follows:

Sum insured	$20,000.00
Less depreciation 25%	$ 5,000.00
	$15,000.00
Less excess	$ 1,200.00
	$13,800.00

The plaintiff accepted this sum from his insurers, and brought an action in the subordinate court claiming damages against the first defendant and the second defendant. He included in his claim for damages a claim for loss of use, on which he failed. There were two other items in his claim. One was for the loss of $1,200 under the excess clause of his policy. The second defendant brought in its own insurers as third party, and the third party admitted liability for this sum, so I am not concerned with this. There remains $5,000, the difference between the sum of $20,000, which the plaintiff paid for the new car, and $15,000, the sum which (less the $1,200) he received from his own insurance company.

At the trial of the action, before the chief magistrate, the chief magistrate dealt with this claim for $5,000 in the following terms:

> As for the loss of $5,000. It was no fault of his (the plaintiff's) that he sustained this loss. Under the terms of his insurance policy there was no way for him to seek a decrease in the written-off value of the car. The terms are written into the policy. There is no disputing it. He has had to bear that loss. So also the loss under the excess clause. The words in the policy are clear. But to whom does he look to recover his losses?
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> The plaintiff bought a brand new car. Through no fault of his own he met an accident. It was written off. He has been deprived of it. I do not think it would be fair to say that he should go and buy another without being reimbursed for it. To my mind $5,000 could be used to put as a down-payment for another car. He could have borrowed it and made the down-payment and then claimed for it. Either way if he bought or did not buy another car he sustained a loss. One has to look at the loss sustained at the time of the accident. There was a loss of under two heads, $5,000 and $1,200. I think he should be compensated for the loss.

Basing himself on this reasoning, the chief magistrate (before whom there was no evidence as to what it would have cost to replace a three-week-old car, the same or

substantially the same as the car written off) awarded the plaintiff $5,000 damages under this head. The chief magistrate ordered that the second defendant should pay the plaintiff the sum of $6,200 (and costs of $800); and he further ordered that the third party should pay the second defendant the sum awarded to the plaintiff (and further costs of $400). From this decision, the third party now appeals.

The case for the appellant is simply that the proper measure of the plaintiff's damages was the market value of the plaintiff's car at the date of the accident. The appellant says it was for the plaintiff to prove at the trial what the market value was, and that the plaintiff failed to do so.

I accept these submissions. Firstly, there can be no doubt that, when a motor car is destroyed in an accident, the normal measure of damages is the market value of the car, ie what it would have cost to replace it, at the date of the accident. Secondly, it is the fact that there was no evidence before the chief magistrate of the market value of the car at the date of the accident. There was evidence on the basis of which he could properly find or assume that the purchase price of the car was $20,000. There was evidence that the plaintiff's insurers had raised no objection to the plaintiff's estimate of the value of the car, at the date of his proposal for insurance, at $20,000. There was evidence that, in accordance with their agreement with the plaintiff, the plaintiff's insurers treated the value of the car, for the purposes of the claim, as $15,000, (something which, as between himself and his insurers, the plaintiff had under the policy no option but to accept). But none of this, as it seems to me, is evidence of the market value of the car as at the date of the accident.

In these circumstances, it seems to me that the chief magistrate approached the matter incorrectly, and that his reasoning cannot be supported. The plaintiff could have succeeded under this head of claim only by proving that the market value of the car at the date of the accident exceeded $15,000; and this he failed to do. He might have proved that he could have replaced the car only by buying a brand-new one, in which case he might have got damages on that basis: see *Moore & Anor* v *DER Ltd.*[1] But he did not do so.

In these circumstances, in my judgment, this appeal succeeds and the order of the chief magistrate must be varied so as to give the plaintiff $1,200 instead of $6,200 by way of damages. The defendants and the third party do not ask me to vary the orders of the chief magistrate as to costs.

Order accordingly.

Solicitors: *Choo Chan & Wong*; *DF Abang Zen*; *Bonds*.

Reported by *Walter Woon*

MALAYSIAN REPORTS

Ng Ngat Siang v Arab-Malaysian Finance Bhd & Anor

HIGH COURT (KUALA LUMPUR) – ORIGINATING SUMMONS NO D2-31-58-87
SITI NORMA YAAKOB J
29 AUGUST 1988

Sale of Goods – Better title to car purchased from registered owner – Dispute on – Sale of car to plaintiff by registered owner but no handing over of registration card – Car subsequently sold by registered owner to first defendant – Whether plaintiff had acquired ownership before second sale – Plaintiff allowing possession of car and registration card by registered owner after sale – Whether first defendant can plead estoppel by negligence against plaintiff – First defendant a bona fide purchaser for value without notice – Whether relevant – Sale of Goods Act 1957, s 27

The plaintiff bought a car from the second defendant. To effect the transfer of ownership of the car into the plaintiff's name, the second defendant had to pay off MUI Finance which had originally financed the second defendant's purchase of the car under a hire-purchase agreement executed by the second defendant with MUI Finance. For this purpose, the second defendant retained possession of the registration card. However, after settling the balance due to MUI Finance and obtaining the endorsement of MUI's ownership in the registration card cancelled, the second defendant did not return the registration card to the plaintiff but instead sold the car to B. B's purchase was financed by the first defendant. As such, an endorsement was inserted in the registration card that ownership was claimed by the first defendant.

The plaintiff applied to the court, via originating summons, for a determination as to whether he or the first defendant had a better title over the car as both had purchased it from the registered owner, the second defendant. The first defendant had pleaded estoppel by negligence against the plaintiff by alleging that the plaintiff had been negligent in allowing the second defendant to retain possession of both the car and the registration card thereby clothing the second defendant with the ostensible authority of ownership and by his own conduct the plaintiff is precluded from denying the second defendant's authority to sell the car to the plaintiff. Also, the first defendant contended that it is a bona fide purchaser for value without notice of the plaintiff's prior interest and that the plaintiff is estopped from denying the first defendant's title to the car.

Held, allowing the application:

(1) After full payment was made by the second defendant to MUI Finance and MUI Finance had relinquished all rights of ownership over the car, the plaintiff had acquired ownership of the car and the second defendant's further dealings on the car with the first defendant are therefore illegal. To that end, the first defendant acquired no title or interest over the car when they purchased it and their only remedy, if any, is against the second defendant personally for the return of the purchase price but as against the plaintiff they cannot claim any right of ownership over the car.

(2) The failure of the second defendant to return the registration card to the plaintiff should not be taken against the plaintiff as the plaintiff had made every effort to get it back